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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,731	03/22/2005	Mirko Appel	2002P15759WOUS	8587

7590 08/04/2009
Siemens Corporation
Intellectual Property Departement
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

LABBEES, EDNY

ART UNIT	PAPER NUMBER
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2612

MAIL DATE	DELIVERY MODE
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08/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,731

Applicant(s)

APPEL ET AL.

Examiner

EDNY LABBEES

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. In the response filed 7/07/2009, applicant has filed a Request for Continued Examination (**RCE**). Claims 12-22 stands and are currently pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torch (US 6,42,081).

Regarding Claim 12, Torch discloses *System And Method For Monitoring Eye Movement* that has the following claimed limitations:

Claimed monitoring a technical installation comprising using a sensor to acquire a physiological reaction of a human during an inspection tour of a portion of the technical installation is met by the system of Torch comprising a detection device (30) for detecting eyelid movement of an individual, wherein the detection device (30) is attachable to a conventional pair of eyeglasses (20) (see Col. 6 lns 38-67). The

detection device (30) may be used to detect impending drowsiness of a user (See Col. 10 Ins 46-55);

Claimed using an assessment tool to record reaction information acquired with the sensor and analyzing information recorded with the assessment tool to diagnose operational condition of a component of the technical installation is met by the system of Torch wherein the detection device (30) comprises a memory circuitry that stores streams of data for subsequent retrieval and analysis (see Col. 8 Ins 52-63). The detection device is used to detect impending drowsiness of an individual with the processing box (130) of the system to monitor the equipment of the onset of drowsiness. Thus the detection device (30) may be used to monitor operators of heavy equipment or factory machinery and control the equipment (see Col. 9 Ins 23-32, Col. 10 Ins 46-55), Col. 11 Ins 1-20 and Col. 12 Ins 59-65).

The system of Torch does not specifically state “technical installation”. Rather, the system of Torch discloses a system for monitoring equipment. It would have been obvious to one of ordinary skill in the art to have readily recognized that the monitoring and controlling of the equipments can be implemented in a technical installation.

Regarding Claim 13, Torch discloses a system wherein the stream of data may be displayed along with other physiological data (e.g. heart rate, respiratory rate, other sleep polysomnographic [PSG] or electroencephalographic [EEG] variables) (see Col. 9 Ins5-22).

Regarding Claim 14, Torch discloses a system wherein a camera on the frame monitors movement of the eye relative to the reference frame (see abstract).

Regarding Claim 15, the claim is interpreted and rejected as claims 1 stated above. The user wears a frame on their head and the person's eyes are monitored (see abstract).

Regarding Claim 16, Torch discloses a system wherein the detection device (30) and system (14) may be used to in a medical diagnostic, therapeutic, research or professional setting to monitor the wakefulness, sleep patterns and/or the effects of drugs, which may affect blink rate, blink velocity, blink duration, or PERCLOS of a patient or vehicle operator. The CPU produces stream of data which the transmitter may send to a remote receiving and processing unit, which may store the stream of data in the memory circuitry for later retrieval and analysis by researchers, medical professional and safety personnel (See Col. 11 Ins 21-40). Although the system of Torch does not specifically state that a database represents a history of human's physiological reaction, one ordinary skilled artisan would have readily recognize since the memory circuitry is used for later retrieval and analysis by researchers, a history of the individual is always stored.

Regarding Claim 17, the claim is interpreted and rejected as claim 12 stated above.

Regarding Claim 18, the claim is interpreted and rejected as 12 stated above.

Regarding Claim 19, the claim is interpreted and rejected as claim 13 stated above.

Regarding Claim 20, the claim is interpreted and rejected as claim 14 stated above.

Regarding Claim 21, the claim is interpreted and rejected as claim 16 stated above.

Regarding Claim 22, the claim is interpreted and rejected as claim 17 stated above.

Response to Arguments

4. As stated above in the ***Status Of Claims***, applicant has filed a Request for Continued Examination (**RCE**) and thus a new action addressing the amendments has been written.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDNY LABBEES whose telephone number is (571)272-2793. The examiner can normally be reached on M-F: 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Davetta W. Goins can be reached on (571)272-2957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Edny Labbees

7/22/2009

/Davetta W. Goins/

Primary Examiner, Art Unit 2612